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In the

Supreme Court of the United States

OCTOBER TERM, 1948

No. 365

FISCH, et al.,
Petitioners,
vs.
GENERAL MOTORS CORPORATION,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINIONS BELOW

The District Court opinion was filed February 27, 1948, (R. 17-20) and is reported in 76 Fed. Supp. 178. The opinion of the Court of Appeals was filed August 2, 1948, (R. 34-45) and is reported in 169 Fed. 2d 266.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28 of the United States Code as amended by the Act of June 25, 1948, (Public Law 773; c. 646). The judgment of the Court of Appeals was entered August 2, 1948 (R. 34). The petition was filed on October 25, 1948. Notice of its filing was served on Respondent on November 24, 1948.

QUESTIONS PRESENTED

The primary questions raised by the petition are the same as those presented in *Atallah v. Hubert & Son* (CCA 4th, July 7, 1948), 168 Fed. 2d 993; cert. den. (No. 340) November 15, 1948 and in *Battaglia et al. v. General Motors Corporation* (4 cases) (CCA 2d July 8, 1948), 169 Fed. 2d 254; cert. den. (No. 320-323) December 6, 1948*. These are:

Congress found that the retroactive enforcement of Section 7 (a) of the Fair Labor Standards Act construed as requiring compensation for "portal-to-portal" activities regardless of any contract, custom or practice to the contrary, constituted a substantial burden on commerce and the courts. To remove such burdens, Congress enacted the Portal-to-Portal Act of 1947. Section 2 of the Act was construed by the lower courts as requiring that a complaint based on Section 7 (a) of the Fair Labor Standards Act and seeking recovery under Section 16 (b)

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*The "Conclusion" to the petitioners' brief (pp. 27-29) is *identical* with Point V (setting forth "the reason relied upon for the allowance of the writ") of the petition in the *Battaglia* case. The same grounds were stated in the petition for certiorari (No. 337) denied by this Court on November 22, 1948, in *Darr v. Mutual Life Insurance Co.* (CCA 2d July 8, 1948), 169 Fed. 2d 262.

of that Act for "portal-to-portal" activities engaged in prior to the effective date of Section 2 of the Portal Act, must allege the facts required by Section 2 in order to state a cause of action and to establish jurisdiction. The facts to be alleged are that a contract, custom or practice to pay for the activities existed between the employee and the employer at the time that the activities were engaged in.

1. Is Section 2 of the Portal Act, as so applied, unconstitutional because it abrogates rights which are protected by the Fifth Amendment to the Constitution?

2. Is Section 2 of the Portal Act, as so applied, unconstitutional because it is an attempt by Congress to interfere with the powers granted the judiciary under Article III, Section 1 of the Constitution?

The subsidiary question presented by the petitioners is as follows:

The complaint was amended to allege that Respondent entered into "certain" contracts with the United States which required the Respondent to comply with the Fair Labor Standards Act. The petitioners contend that thereby the Respondent was under a contractual obligation to pay for the alleged "portal-to-portal" activities. The petitioners further contend that they are third party beneficiaries of such obligation and, as such, are entitled to recover therefor by contract actions which are independent of the Fair Labor Standards Act and the Portal Act. The jurisdictional basis for such independent contract actions was alleged by the amendment to be diversity of citizenship. The jurisdictional amount was alleged as follows: "The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars." The amendment claimed a total of $700,000 on behalf of 682 named plaintiffs or an average of $1026 per claimant.

Did the lower court err in dismissing the independent contract actions alleged by the amended complaint for lack of jurisdiction?

STATUTES INVOLVED

The petitioners' brief does not set forth the applicable sections of the Portal Act. For the Court's convenience, therefore, the full text of Section 1 and Section 2 (a)-(d) of the Act are reprinted in Appendix A to this brief.

SUMMARY OF ARGUMENT

There are no special and important reasons for granting the petition:

(1) There is complete unanimity of opinion in numerous lower federal courts and in all of the Courts of Appeals that Section 2 of the Portal Act as construed by the lower court is a constitutional exercise by Congress of its power over commerce. Unless this Court feels that this unanimous conclusion is open to question, this Court's consideration of the issue is not necessary to settle the status of pending cases.

(2) Had the Court of Appeals agreed with the petitioners' contention that the Section violates the Fifth Amendment, the decision would clearly have been in conflict with the decisions of this Court regarding the power over commerce granted Congress by the Constitution.

3. Had the Court of Appeals agreed with the petitioners' contention that the Section constitutes an interference with the judiciary, the decision would clearly have been in conflict with the decisions of this Court regarding the power over the jurisdiction of inferior courts granted Congress by the Constitution.

4. Under the decisions of this Court, there clearly was no jurisdiction in the District Court to entertain the independent contract actions alleged by the amended complaint.

ARGUMENT

Point I.

NUMEROUS DISTRICT COURTS HAVE UNANIMOUSLY UPHELD THE CONSTITUTIONALITY OF SECTION 2 OF THE PORTAL ACT ON MOTIONS TO DISMISS THE COMPLAINTS BEFORE TRIAL. THREE COURTS OF APPEALS HAVE UNANIMOUSLY AFFIRMED ON IDENTICAL GROUNDS.

There are numerous "portal-to-portal" cases in which the same contentions under the Constitution that are now made by the petitioners were presented to and considered by lower federal courts. Not one of these cases has come to the attention of Respondent's counsel in which the contentions were accepted by the court.

Counting only decisions in which opinions were written and reported, a total of fifty-two federal district judges sitting in thirty-three federal districts in all ten federal circuits have granted defendants' motions to dismiss under Section 2 of the Portal Act in almost two hundred "portal-to-portal" actions. See Appendix B *infra*, which contains a summary and a list of such dismissals by federal district and judge.* In each instance, the complaint sought recovery for activities engaged in prior to the effective date of the Portal Act. In each instance, the motion was based on the failure of the complaint to allege the facts required by Section 2 of that Act. In each

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* Appendix C *infra* contains a similar summary and list of the dismissal of more than one hundred unreported cases which have been brought to the attention of Respondent's counsel. Appendix D *infra* contains a summary of both the reported and unreported dismissals by federal circuit and district.

instance, the court found Section 2 of the Act constitutional.

Five appeals from the dismissals of eight such cases were perfected and decided—two in the Fourth Circuit; one in the Second Circuit and two in the Sixth Circuit. In each case the court unanimously affirmed the dismissal on the ground that Section 2 of the Portal Act was within the power over commerce granted Congress by the Constitution. *Seese v. Bethlehem Steel Co.* (CCA 4th, May 5, 1948) 168 Fed. 2d 58; *Atallah v. Hubert & Son* (CCA 4th, July 7, 1948) 168 Fed. 2d 993, cert. den. Nov. 15, 1948; *Battaglia, et al. v. General Motors Corporation* (4 cases), (CCA 2d, July 8, 1948) 169 Fed. 2d 254, cert. den. Dec. 8, 1948; *Fisch, et al. v. General Motors Corporation* and *Bateman, et al. v. Ford Motor Company* (CCA 6th, August 2, 1948) 169 Fed. 2d 269, R. 34.

Two state supreme courts have similarly found Section 2 of the Portal Act constitutional on the same ground. *Werner v. Milwaukee Solvay Coke Company* (Wis. S. C. March, 1948) 252 Wis. 392; 31 N. W. 2d 605; *Kemp v. Day & Zimmerman* (Iowa S. C. June, 1948) —— Iowa ——; 33 N. W. 2d 569; 8 W. H. cases 78.

The petitioners' brief (p. 28) cites without comment, three district court cases in support of the statement that "many doubts" have been expressed "as to the propriety and constitutionality of the Act."

In two of the three cases, the courts granted the defendants' motions to dismiss the complaints after finding that Section 2 of the Portal Act is constitutional. *Cochran v. St. Paul & Tacoma Lumber Co.*, W. D. Wash., May 26, 1947, 73 Fed. Supp. 288; *Boehle v. Electric Metallurgical Co.*, Ore., June 9, 1947, 72 Fed. Supp. 21. In the third case (*Sveltik v. Vultee Aircraft Corp.* (N. D. Tex., 1947) 16

U. S. Law Week 2161; 7 W. H. Cases 282) the court deferred the question without consideration:

> "I could learn a whole lot more by reading your briefs; I will admit that. But for the present I overrule defendant's plea to the jurisdiction * * *"

The petitioners' brief (p. 28) also cites without comment, the decisions of two Courts of Appeals in support of the statement that "there is no unanimity of opinion on the basis of the decisions" in the circuit courts. The reason for the lack of comment is obvious; no conflict exists. All the decisions of the Courts of Appeals agree that the Act is within the power over commerce granted Congress.

One of the cases cited by the petitioners' brief (p. 28) is *Rogers Cartage Co. v. Reynolds,* CCA 6 Feb., 1948, 166 Fed. 2d 317, which involved the constitutionality of Sections 9 and 11 of the Portal Act. The court found both sections constitutional on the ground that they were within the commerce power.

> "Congress, in the exercise of its power to regulate interstate commerce, may interfere with valuable property rights." The rights asserted here "are purely the creature of statute." 166 Fed. 2d at 320-321.

In *Darr v. Mutual Life Insurance Co.* (CCA 2, July, 1948) (169 Fed. 2d 262, cert. den. Nov. 22, 1948 (not cited by the petition) the constitutionality of the same sections of the Act was questioned. The Court of Appeals for the Second Circuit came to the same conclusion on the same ground:

> "We hold, therefore, as did the Sixth Circuit in *Rogers Cartage Co. v. Reynolds,* 166 F. 2d 317, that, even if appellants' rights are considered as contractual, these two sections are a valid exercise of the

> constitutional power of Congress to legislate in the field of interstate commerce * * *." 169 Fed. 2d at 266.

The second case cited by the petitioners to support the claim that there is no unanimity of opinion in the Courts of Appeals (the *Seese* case, *supra*), is one of the four Court of Appeals' decisions all of which specifically decided that Section 2 of the Portal Act is a constitutional exercise by Congress of its power over interstate commerce.

In the *Seese* case the Court of Appeals for the Fourth Circuit stated:

> "The answer is that even rights arising out of contract cannot fetter Congress in the exercise of a power granted it by the Constitution and that the rights stricken down by the statute are not rights arising out of contracts at all but rights created by statute as an incident of the statutory regulation of commerce." 168 Fed. 2d at 62.

On July 7, 1948, the same court in a *per curiam* opinion affirmed a similar dismissal on the same grounds. *Atallah v. Hubert & Son*, 168 Fed. 2d 993, cert. den. Nov. 15, 1948.

The Court of Appeals for the Second Circuit in affirming the dismissal of four such cases stated (*Battaglia v. General Motors Corporation*, 169 Fed. 2d 254, cert. den. December 6, 1948):

> "We find ourselves, then, in agreement with the decision of the Circuit Court of Appeals for the Fourth Circuit in Seese v. Bethlehem Steel Co., 4 Cir., 168 F. 2d 58." 169 Fed. 2d at 262.

The Court of Appeals for the Sixth Circuit in affirming the similar dismissal of the present two cases by the five district judges sitting *en banc* in the Eastern District of Michigan, reached the same conclusion (*Fisch v. General*

Motors Corporation; Bateman v. Ford Motor Company, 169 Fed. 2d at 271):

> "The proposition that their rights granted by the Congress under the commerce clause could not be taken away by the congressional legislation under the same clause, is self-contradictory.
>
> "Rights secured even by private contract may be abrogated by subsequent legislation when authorized by constitutional provisions."

All three Courts of Appeals specifically rejected the contention that Section 2 of the Portal Act constitutes an interference with the powers granted the judiciary under Article III, Section 1 of the Constitution. *Seese* case, 168 Fed. 2d at 62; *Battalgia* case, 169 Fed. 2d at 261-262; *Fisch* case, 169 Fed. 2d at 272.

All three Courts of Appeals specifically rejected the petitioners' contention that a decision on the constitutional questions should await a trial. *Seese* case, 168 Fed. 2d at 59; *Battaglia* case, 169 Fed. 2d at 256-257; *Fisch* case, 169 Fed. 2d at 269.

It is clear that all of the large number of lower federal courts and all of the three Courts of Appeals which have passed on the contentions made by the petitioners unanimously agree that Section 2 of the Portal Act as construed by the lower court does not violate the Constitution.

Unless this Court feels that the conclusion is open to question, consideration by this Court of the contentions made by the petitioners is not necessary to settle the status of similar claims still pending in the courts.

Point II.

THE DECISION OF THE COURT OF APPEALS IS IN ACCORD WITH THE DECISIONS OF THIS COURT REGARDING THE POWER TO REGULATE COMMERCE GRANTED CONGRESS BY THE CONSTITUTION

The broad scope of the plenary power granted Congress by the commerce clause has been clearly indicated in a number of recent decisions by this Court.

In *U. S. v. Darby* (1941) 312 U. S. 100, in upholding the constitutionality of the Fair Labor Standards Act, which involved the same form of activity in commerce as is affected by the Portal Act, Justice Stone stated:

> "The power of Congress over interstate commerce 'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution.' *Gibbons v. Ogden, supra,* 196.
>
> "It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states." 312 U. S. at 114-115.

See also: *Labor Board v. Jones and Laughlin* (1937), 301 U. S. 1, 36-37; *North American Co. v. S. E. C.* (1946), 327 U. S. 686, 705-706; *American Power & Light Co. v. S. E. C.* (1946), 329 U. S. 90, 99, 103-104.

The rights and remedies which the petitioners sought to enforce under the Fair Labor Standards Act have been described by this Court as statutory. See: *Overnight Motor Co. v. Missel* (1942), 316 U. S. 572, 574; *Tennessee Coal, Iron and R. R. Co. v. Muscoda Local* (1944), 321 U.

S. 590, 602, 603; *Jewel Ridge Corp. v. UMW* (1943), 325 U. S. 161, 167.

This Court has held that these rights could not be waived because they are statutory rights conferred on private parties in the public interest and in the furtherance of a Congressional policy for the regulation of commerce. *Brooklyn Savings Bank v. O'Neil* (1944) 324 U. S. 697, 704.

The rights affected by the Portal Act are only those rights which are based solely on the Fair Labor Standards Act.

This Court has repeatedly held that even purely private contractual rights cannot fetter the plenary powers granted Congress by the Constitution. In *Louisville and Nashville R. R. Co. v. Mottley* (1911) 219 U. S. 467, 482, this Court said:

> "That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations, is inconceivable. The framers of the Constitution never intended any such state of things to exist."

See also: *Norman v. Baltimore & Ohio R. R. Co.* (1935), 294 U. S. 240; *Fleming v. Rhodes* (1947), 331 U. S. 100, 109; *Addyston Pipe & Steel Co. v. U. S.* (1899), 175 U. S. 211, 228-230.

Since contractual rights have a "congenital infirmity" when they relate to a subject matter that lies within the control of Congress (*Norman v. B. & O. R. R. Co.*, 294 U. S. at 307) clearly rights and remedies conferred by Congress for the specific purpose of fostering commerce are subject to defeasance when Congress finds that their immediate withdrawal is necessary to prevent great injury to commerce.

The petitioners have attacked the motives and conclusions of Congress in the enactment of the Portal Act.

This Court has repeatedly warned that it is not its function to re-examine the conclusions of Congress or the policy and remedies adopted by Congress in the exercise of its constitutional powers. In the *Darby* case, *supra*, Justice Stone stated:

> "The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the Courts are given no control. *McCray v. U. S.*, 195 U. S. 27; *Sonzinsky v. U. S.*, 300 U. S. 506, 513 and cases cited. The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power." 312 U. S. at 115.

See also: *American Power & Light* case, *supra*, 329 U. S. at 90, 106-107; *Sunshine Coal Co. v. Adkins* (1940), 310 U. S. 381, 394.

The Court of Appeals therefore held in conformance with the decisions of this Court in deciding that rights created by Congress under its commerce power were subject to withdrawal by Congress in the further exercise of such power.

The petitioners' brief (pp. 28-29) lists four decisions of this Court in support of the contention that the decision of the Court of Appeals erroneously held that there was no violation of the Fifth Amendment.

None of these four decisions involved the exercise by Congress of its power over commerce.

Three of these four decisions involved state enactments. *Pacific Mail Steamship Co. v. Joliffe* (1864) 2 Wall. 450;

Ettor v. City of Tacoma (1913) 228 U. S. 148; and *Coombes v. Getz* (1932), 285 U. S. 434. None of these enactments were passed in the exercise of the state's police power which would be necessary to make them in any way analogous to the present statute. See: *U. S. v. Darby,* p. 10 *supra.* None of the enactments reflected a conclusion by the legislature that the termination of the rights granted by the prior enactment was necessary.

In the *Joliffe* case the court emphasized that the plaintiff changed his position in reliance on the statutory provision and that the form of the new statute clearly indicated no intention in the legislature to cut off rights created under the prior statute. This was a four to three decision, the minority maintaining that the statutory right fell even though the legislature did not show in the new statute any intention to cut off the right under the prior statute. The *Coombes* case (a five to three decision) involved similar considerations with the three dissenting Justices (Cardozo, Brandeis and Stone) taking the same position as was taken by the minority in the *Joliffe* case. In the *Ettor* case, the court held that the city could not repudiate its obligation to pay damages resulting from grading authorized by statute on that condition, solely because of the subsequent repeal of the statute.

The fourth case cited by the petition (*U. S. v. General Motors Corporation* (1944), 323 U. S. 373) involved a question entirely foreign to the present questions:

> "The problem involved is the ascertainment of the just compensation required by the Fifth Amendment of the Constitution, where in the exercise of the power of eminent domain, temporary occupancy of a portion of a leased building is taken from a tenant who holds under a long term lease. • • • The award was therefore limited to the market value

of the occupancy of a vacant building. The question is whether any other element of value inhered in the interest taken." 323 U. S. at 374, 379.

Point III.

THE DECISION OF THE COURT OF APPEALS IS IN ACCORD WITH THE DECISIONS OF THIS COURT REGARDING THE POWER TO REGULATE THE JURISDICTION OF INFERIOR COURTS GRANTED CONGRESS BY THE CONSTITUTION

The derivation and scope of the jurisdiction of all inferior federal courts has been described in this Court's decision in *Lockerty v. Phillips* (1943) 319 U. S. 182, 187:

> "The Congressional power to ordain and establish inferior courts includes the power 'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.'"

This Court has further stated in *Kline v. Burke Construction Co.* (1922) 260 U. S. 226, 234, that:

> "And the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a saving clause all pending cases though cognizable when commenced must fall. *The Assessors v. Osbornes,* 9 Wall. 567, 575. A right which thus comes into existence only by virtue of an act of Congress, and which may be withdrawn by an act of Congress after its exercise has begun, cannot well be described as a constitutional right."

In *United States v. United Mine Workers of America* (1947), 330 U. S. 258, Justice Rutledge (in a dissent from a holding involving other questions) summarized the holdings of this Court on that question as follows:

> "And where Congress has acted expressly to exclude particular subject matter from the jurisdiction of any court, except this Court's original jurisdiction, I know of no decision here which holds the exclusion invalid, * * *" 330 U. S. at 351.

The petitioners' brief (p. 29) urges that Section 2 of the Portal Act constitutes an invasion of the powers granted the judiciary under Article III Section 1 of the Constitution.

The Portal Act is expressly based on the acceptance by Congress of this Court's construction of Section 7 (a) of the Fair Labor Standards Act and Congress' finding that Section 7 (a), as so construed, created conditions inimical to commerce and the operation of the courts. Section 1 of The Portal Act, Appendix A, *infra*. Congress concluded that to remedy these conditions it was necessary to enact Section 2 of the Portal Act which, *inter alia*, withdraws from inferior courts part of the jurisdiction that Congress had previously conferred on such courts under The Fair Labor Standards Act.

The petitioner's brief (p. 29) lists four cases to srpport the contention that the decision of the Court of Appeals conflicts with the decisions of this Court on that question.

None of the four cases is applicable. *United States v. Klein*, 13 Wall. 128, 20 L. Ed. 519, involved an attempt by Congress to interfere with pardons granted by the President in pursuance of his powers under Article II Section 2 of the Constitution:

> "Its great and controlling purpose is to deny to pardons granted by the President the effect which this court adjudged them to have." 13 Wall. at 145.

Kilbourn v. Thompson (1880) 103 U. S. 168, involved the question whether Congress had constitutional authority to

punish a witness for contempt. In *James v. Appel* (1903), 192 U. S. 129, it was held that a territorial statute providing for an automatic denial of a motion for new trial, if not ruled on by a judge during the term, did not constitute an interference with the judiciary and was not inconsistent with the grant by Congress of common law jurisdiction to the courts of the territory. In *Prentis v. Atlantic Coast Line* (1908) 211 U. S. 210, this Court (per Justice Holmes), held that though the proceedings fixing railroad rates appeared judicial in form they were in fact legislative. The action was remanded to await completion of the legislative process before allowing the railroad to attack the rates as confiscatory.

The decision of the Court of Appeals therefore is in clear accord with the decisions of this Court regarding the powers granted Congress under Article III Section 1 of the Constitution.

Point IV.

THE DISMISSAL FOR LACK OF JURISDICTION OF THE INDEPENDENT CONTRACT ACTIONS ALLEGED BY THE AMENDED COMPLAINT WAS IN ACCORD WITH THE DECISIONS OF THIS COURT

Afer Respondent's motion to dismiss, the complaint was amended to allege that "during the period" since October 24, 1938, the Respondent entered into "certain" contracts with the United States which contained a provision requiring the Respondent to comply with the Fair Labor Standards Act. Alleg. XX, R. 13. Petitioners contend that such provision created a contractual obligation in the Respondent to compensate its employees for "portal-to-portal" activities. They further contend that they are third party beneficiaries of that contractual obligation and as such are entitled to recover time and one-half for the "portal-to-

portal" activities described in the complaint. Petitioners also contend that "this theory of recovery is neither predicated upon nor is it dependent upon the continuing validity or existence of the Fair Labor Standards Act with or without its amendment by the Portal-to-Portal Act" (petitioners' brief p. 7).

Jurisdiction to entertain these independent contract claims is alleged by the amendment to exist because of a diversity of citizenship. The only allegation of the jurisdictional amount required for such actions is the statement that: "The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars." Alleg. XXIV, R. 14. The contract claims are alleged by the amendment to total $700,000. R. 15. A total of 682 named plaintiffs have joined in the action (R. 29-30). Each claimant, therefore, is seeking an average of $1026.

It is abundantly clear from the decisions of this Court that these individual claims may not be aggregated for jurisdictional purposes. *Clark v. Paul Gray, Inc.* (1939), 306 U. S. 583, 589; *Pinel v. Pinel* (1916), 240 U. S. 594; *Thomson v. Gaskill* (1941), 315 U. S. 442, 447. The Court of Appeals, therefore, held in accord with these decisions when it decided that: "Each plaintiff has a separate and distinct demand for the compensation to him and there is no allegation that as to him the matter in controversy exceeds the jurisdictional sum or value of $3,000." 169 Fed. 2d at 274, R. 44.

CONCLUSION

It is respectfully submitted that the petition should be denied.

Respectfully submitted,

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December 20, 1948.

APPENDIX A

TEXT OF SECTION 1 AND SECTIONS 2(a)-(d) OF THE PORTAL-TO-PORTAL ACT OF 1947 (c. 52, PUBLIC LAW 49, MAY 14, 1947)

Section 1

"(a) The Congress hereby finds that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be en-

couraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

"The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

"The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act be enacted.

"The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

"The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect and foster commerce, that this Act shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

"(b) It is hereby declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

Section 2(a)-(d)

"(a) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act (in any action or proceeding commenced prior to or on or after the date of the enactment of this Act), on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any activity of an employee engaged in prior to the date of the enactment of this act, except an activity which was compensable by either

"(1) an express provision of a written or non-written contract in effect, at the time of such activity, between such employee, his agent or collective-bargaining representative and his employer; or

"(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee was employed, covering such activity, not inconsistent with a written or non-written contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

"(b) For the purposes of subsection (a), an activity shall be considered as compensable under such contract provision or such custom or practice only when it was engaged in during the portion of the day with respect to which it was so made compensable.

"(c) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Bacon-Davis Act, in determining the time for which an employer employed an employee there shall be counted all that time, but only that time, during which the employee engaged in activities which were compensable within the meaning of subsections (a) and (b) of this section.

"(d) No court of the United States, of any State, Territory or possession of the United States, or of the District

of Columbia, shall have jurisdiction of any action or proceeding, whether instituted prior to or on or after the date of the enactment of this Act, to enforce liability or impose punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, under the Walsh-Healey Act, or under the Bacon-Davis Act, to the extent that such action or proceeding seeks to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section."

APPENDIX B-1

SUMMARY OF DECISIONS BY DISTRICT COURTS DISMISSING "PORTAL-TO-PORTAL" ACTIONS UNDER SECTION 2 OF THE PORTAL ACT

District Court	District Judge	Total Cases Dismissed
First Circuit		
D. Mass.	Sweeney	17
Second Circuit		
W. D. N. Y.	Knight	6
S. D. N. Y.	Coxe	3
	Goddard	1
	Knox	1
	Clancy	16
	Hulbert	1
N. D. N. Y.	Brennan	1
D. Conn.	Hincks	3
Third Circuit		
E. D. Pa.	Kirkpatrick	1
	Follmer	1

District Court	District Judge	Total Cases Dismissed
W. D. Pa.	Gibson	43
D. N. J.	Meaney	1
	Forman	1
	Madden	3
Fourth Circuit		
D. Md.	Chesnut	1
Fifth Circuit		
N. D. Ga.	Russell	5
S. D. Tex.	Atwell	1
	Kennerly	1
N. D. Tex.	Atwell	1
Sixth Circuit		
E. D. Mich.	Picard, O'Brien, Lederle, Koscinski, Levin	2
N. D. Ohio	Jones	3
E. D. Tenn.	Darr	2
	Taylor	2
Seventh Circuit		
N. D. Ill.	Barnes	1
	Campbell	1
E. D. Ill.	Lindley	2
E. D. Wis.	Duffie	1
W. D. Wis.	Stone	2
Eighth Circuit		
D. Minn.	Donovan	3
	Nordbye	2
S. D. Iowa	Dewey	6
W. D. Mo.	Ridge	2
	Reeves	4
E. D. Mo.	Hulen	2

District Court	District Judge	Total Cases Dismissed
Ninth Circuit		
D. Mont.	Pray	1
D. Idaho	Clark	28
D. Ore.	McColloch	1
W. D. Wash.	Leavy	4
E. D. Wash.	Driver	1
N. D. Cal.	Roche, Goodman & Harris	5
	Goodman	1
S. D. Cal.	Yankwich	2
	Hall	1
	O'Connor	2
Tenth Circuit		
N. D. Okla.	Savage	1
E. D. Okla.	Rice	1
D. Kans.	Mellott	3
33	52	194
Total Districts	Total Judges	Total Cases

APPENDIX B-2

LIST OF DISTRICT COURTS' DECISIONS DISMISSING "PORTAL-TO-PORTAL" ACTIONS UNDER SECTION 2 OF THE PORTAL-TO-PORTAL ACT OF 1947

First Circuit

MASSACHUSETTS

Moeller v. Eastern Gas & Fuel Associates, Sweeney, December 22, 1947, 74 F. Supp. 937.

NOT OFFICIALLY REPORTED

Millet v. Bethlehem-Hingham Shipyard (3 cases), Sweeney, June 4, 1948, 8 W. H. Cases 46.

Mitchell v. Boston Sausage Co. (11 cases), Sweeney, June 4, 1948, 8 W. H. Cases 49.

Finn v. Bethlehem Steel Co., Sweeney, June 4, 1948, 8 W. H. Cases 51.

Wiley v. Reece Corp., Sweeney, June 4, 1948, 8 W. H. Cases 52.

Second Circuit

NEW YORK—WESTERN DISTRICT

Battaglia, et al. v. General Motors Corporation (4 cases), Knight, December 15, 1947, 74 F. Supp. 274; affirmed July 8, 1948, 169 F. 2d 254.

Sinclair v. U. S. Gypsum Company, Knight, January 24, 1948, 75 F. Supp. 439.

NOT OFFICIALLY REPORTED

Donovan v. Republic Steel Corporation, Knight, January 22, 1948, 7 W. H. Cases 644; 14 C. C. H. Labor Cases, par. 64,295.

NEW YORK—SOUTHERN DISTRICT

Borucki, et al. v. Continental Baking Company, Coxe, November 7, 1947, 74 F. Supp. 815.

NOT OFFICIALLY REPORTED

Sochulak v. American Brake Shoe Company, Goddard, January 5, 1948, 7 W. H. Cases 584; 13 C. C. H. Labor Cases, par. 64,220.

Shaietvitz v. Laws, Knox, May 3, 1948, 7 W. H. Cases 975.

Markert and 699 others, & c. v. Swift & Co., Inc., et al., Coxe, November 12, 1947, 7 W. H. Cases 459, 13 C. C. H. Labor Cases, par. 64,145; Coxe, June 23, 1948, 8 W. H. Cases 159.

Bonner, et al. v. Elizabeth Arden, Inc., Coxe, November 22, 1947, 7 W. H. Cases 469, 13 C. C. H. Labor Cases, par. 64,147; Coxe, June 22, 1948, 8 W. H. Cases 68.

Lemme v. Caruso Foods, Inc. (fifteen cases), Clancy, January 17, 1948, 7 W. H. Cases 626.

Cook v. Industrial Rayon Corp., Clancy, June 23, 1948, 8 W. H. Cases 218.

Abernathy v. General Motors Corporation, Hulbert, May 8, 1948, 7 W. H. Cases 1027.

NEW YORK—NORTHERN DISTRICT

Cardinale, et al. v. General Motors Corporation, Brennan, October 25, 1947, 76 F. Supp. 743.

CONNECTICUT

Local 626, UAW-CIO v. General Motors Corporation (2 cases), Hincks, October 22, 1947, 76 F. Supp. 593.

Moeller, et al. v. Atlas Powder Company, Hincks, October 22, 1947, 76 F. Supp. 707.

Third Circuit

PENNSYLVANIA—EASTERN DISTRICT

Battery Workers' Union v. Electric Company, Kirkpatrick, January 30, 1948, 78 F. Supp. 947.

NOT OFFICIALLY REPORTED

Medrick v. Textile Machine Works, Inc., Follmer, July 20, 1948, 8 W. H. Cases 202.

PENNSYLVANIA—WESTERN DISTRICT

Hart v. Aluminum Company of America (forty-three cases), Gibson, October 8, 1947, 73 F. Supp. 727.

NEW JERSEY

Grazeski v. Federal Shipbuilding & Dry Dock Company, Meaney, April 16, 1948, 76 F. Supp. 845.

Hoyt v. Merritt-Chapman & Scott Corp., Madden, August 9, 1948, 79 F. Supp. 106.

Industrial Union v. New York Shipbldg. Corp. (2 cases), Madden, August 9, 1948, 79 F. Supp. 104.

NOT OFFICIALLY REPORTED

Hess v. E. I. duPont de Nemours & Company, Forman, July 9, 1948, 8 W. H. Cases 118.

Fourth Circuit

MARYLAND

Seese, et al. v. Bethlehem Steel Company, Chesnut, October 14, 1947, 74 F. Supp. 412; affirmed May 5, 1948, 168 F. 2d 58.

Fifth Circuit

GEORGIA—NORTHERN DISTRICT

May, et al. v. General Motors Corporation, Russell, October 17, 1947, 73 F. Supp. 878.

NOT OFFICIALLY REPORTED

Akins, et al. v. Firestone Tire & Rubber Company, Russell, October 17, 1947, 7 W. H. Cases 356.

Cassels, et al. v. General Motors Corporation, Russell, October 17, 1947, 7 W. H. Cases 355.

Glynn Metal Trades Council, et al. v. J. A. Jones Construction Company, Inc., Russell, October 17, 1947, 7 W. H. Cases 355.

Robison, et al. v. General Motors Corporation, Russell, October 17, 1947, 7 W. H. Cases 355.

TEXAS—NORTHERN DISTRICT

Burfiend v. Eagle-Picher Company, Atwell, May 21, 1947, 71 F. Supp. 929.

TEXAS—SOUTHERN DISTRICT

Story, et al. v. Todd Houston Shipbuilding Corporation, Kennerly, July 17, 1947, 72 F. Supp. 690.

Sixth Circuit

MICHIGAN—EASTERN DISTRICT

Fisch, et al. v. General Motors Corporation; Bateman, et al. v. Ford Motor Company, Picard, O'Brien, Lederle, Koscinski, Levin, February 27, 1948, 76 F. Supp. 178; affirmed August 2, 1948, 169 F. 2d 266.

OHIO—NORTHERN DISTRICT

Fajack v. Cleveland Graphite Company, Jones, July 23, 1947, 73 F. Supp. 308.

NOT OFFICIALLY REPORTED

Hassel v. Standard Oil Company, Jones, May 4, 1948, 8 W. H. Cases 41.

Smith v. Cleveland Pneumatic Tool Company, Jones, March 30, 1948, 7 W. H. Cases 855.

TENNESSEE—EASTERN DISTRICT

Lasater, et al. v. Hercules Powder Company, Darr, July 25, 1947, 73 F. Supp. 264.

Colvard, et al. v. Southern Wood Preserving Company, Darr, November 1, 1947, 74 F. Supp. 804.

NOT OFFICIALLY REPORTED

Young v. Kellex Corporation, Taylor, January 2, 1948, 7 W. H. Cases 562.

Jesse v. Tennessee Eastman Corporation, Taylor, May 6, 1948, 7 W. H. Cases 983.

Seventh Circuit

ILLINOIS—NORTHERN DISTRICT

NOT OFFICIALLY REPORTED

McCalpin v. Magnus Metal Corporation, Barnes, July 1, 1948, 8 W. H. Cases 120.

Bauler v. Pressed Steel Car Company, Campbell, May 27, 1948, 8 W. H. Cases 55.

ILLINOIS—EASTERN DISTRICT

NOT OFFICIALLY REPORTED

Smith, et al. v. American Can Co., Lindley, January 12, 1948, 7 W. H. Cases 603.

Green, et al. v. Stokely Foods, Inc., Lindley, January 12, 1948, 7 W. H. Cases 603.

WISCONSIN—EASTERN DISTRICT

Ackerman, et al. v. J. I. Case Company, Duffy, November 4, 1947, 74 F. Supp. 639.

WISCONSIN—WESTERN DISTRICT

NOT OFFICIALLY REPORTED

Lee v. Hercules Powder Co. (2 cases), Stone, March 18, 1948, 8 W. H. Cases 247.

Eighth Circuit

MINNESOTA

Smith, et al. v. Cudahy Packing Company (3 cases), Donovan, September 15, 1947, 73 F. Supp. 141; December 12, 1947, 76 F. Supp. 575.

Plummer v. Minneapolis-Moline Power Implement Company, Nordbye, February 3, 1948, 76 F. Supp. 745.

NOT OFFICIALLY REPORTED

DeMaio v. Grant Storage Battery Company, Nordbye, February 3, 1948, 7 W. H. Cases 721; 14 C. C. H. Labor Cases, par. 64,285.

IOWA—SOUTHERN DISTRICT

NOT OFFICIALLY REPORTED

Hornbeck, et al. v. Dain Manufacturing Company (6 cases), Dewey, September 25, 1947, 7 W. H. Cases 295; 13 C. C. H. Labor Cases, par. 64,055.

MISSOURI—WESTERN DISTRICT

Sadler v. Dickey Clay Manufacturing Company, Ridge, September 30, 1947, 73 F. Supp. 690; Ridge, February 25, 1948, 78 F. Supp. 616.

Charles Breusing, et al. v. General Motors Corporation (Fisher Body Div., Kansas City Plant), Reeves, October 29, 1947, 74 F. Supp. 541.

Bumpus v. Remington Arms Company, Reeves, December 10, 1947, 74 F. Supp. 788; March 27, 1948, 77 F. Supp. 94.

Lockwood v. Hercules Powder Company, Ridge, February 16, 1948, 78 F. Supp. 716.

Tucker v. Pratt Whitney, W. D. Mo., March 25 1948, 77 F. Supp. 227.

NOT OFFICIALLY REPORTED

Hayes, et al. v. Hercules Powder Company, Reeves, November 1, 1947, 7 W. H. Cases 381; 13 C. C. H. Labor Cases, par. 64,123.

MISSOURI—EASTERN DISTRICT

Johnson, et al. v. Park City Consolidated Mines Company, Hulen, October 3, 1947, 73 F. Supp. 852.

NOT OFFICIALLY REPORTED

Horner, et al. v. McQuay Norris Manufacturing Company, Hulen, October 3, 1947, 13 C. C. H. Labor Cases, par. 64,086; 7 W. H. Cases 436.

Ninth Circuit

MONTANA

Role v. Neils Lumber Company, Pray, December 19, 1947, 74 F. Supp. 812.

IDAHO

Hollingsworth, et al. v. Federal Mining and Smelting Company (28 cases), Clark, December 12, 1947, 74 F. Supp. 1009.

OREGON

Boehle v. Electric Metallurgical Company, McColloch, June 9, 1947, 72 F. Supp. 21.

WASHINGTON—WESTERN DISTRICT

Cochran, et al. v. St. Paul and Tacoma Lumber Company (4 cases), Leavy, May 26, 1947, 73 F. Supp. 288.

WASHINGTON—EASTERN DISTRICT

NOT OFFICIALLY REPORTED

Miller v. How Sound Mining Company, Driver, May 11, 1948, 8 W. H. Cases 1.

CALIFORNIA—NORTHERN DISTRICT

Alameda, et al. v. Paraffine Companies, Inc. (5 cases), Roche, Goodman and Harris, November 6, 1947, 75 F. Supp. 282.

Kirkham v. Pacific Gas & Electric Company, Goodman, December 22, 1947, 78 F. Supp. 658.

CALIFORNIA—SOUTHERN DISTRICT

Ditto v. Aluminum Company of America, Yankwich, June 9, 1947, 73 F. Supp. 955.

Quinn, et al. v. California Shipbuilding Corporation, Hall, September 29, 1947, 76 F. Supp. 742.

Devine et al. v. Joshua Hendy Corp., S. D. Calif., April 30, 1948, 77 F. Supp. 893.

NOT OFFICIALLY REPORTED

Felton v. Latchford Marble Glass Co., O'Connor, May 26, 1948, 8 W. H. Cases 53.

Tully v. Joshua Hendy Corp., O'Connor, July 28, 1948, 8 W. H. Cases 198.

Tenth Circuit

OKLAHOMA—NORTHERN DISTRICT

NOT OFFICIALLY REPORTED

Adkins v. E. I. duPont de Nemours & Company, Savage, September 26, 1947, 7 W. H. Cases 298; 13 C. C. H. Labor Cases, par. 64,025.

OKLAHOMA—EASTERN DISTRICT

NOT OFFICIALLY REPORTED

McDaniel v. Brown & Root, Inc., Rice, March 6, 1948; amended April 5, 1948, 7 W. H. Cases 978.

KANSAS

NOT OFFICIALLY REPORTED

Elting, et al. v. North American Aviation, Inc. (3 cases), Mellott, November 3, 1947, 7 W. H. Cases 491; 13 C. C. H. Labor Cases, par. 64,154.

APPENDIX C-1

SUMMARY OF UNREPORTED DISMISSALS BY DISTRICT COURTS OF "PORTAL-TO-PORTAL" ACTIONS UNDER SECTION 2 OF THE PORTAL ACT

District Court	District Judge	Total Cases Dismissed
Second Circuit		
D. Conn.	Smith	1
S. D. N. Y.	Conger	3
Third Circuit		
D. N. J.	Forman	1
	Meaney	5
		18
Fourth Circuit		
W. D. Va.		2
Fifth Circuit		
N. D. Tex.	Atwell	1
S. D. Tex.		1
S. D. Ala.	McDuffie	1

District Court	District Judge	Total Cases Dismissed
Sixth Circuit		
N. D. Ohio	Jones	6
S. D. Ohio	Nevin	2
	Druffel	12
W. D. Tenn.	Boyd	23
E. D. Ky.		1
Seventh Circuit		
N. D. Ill.	Campbell	2
	Sullivan	1
	Igoe	2
S. D. Ind.	Baltzell	8
W. D. Wis.	Stone	3
Eighth Circuit		
W. D. Mo.	Duncan	1
	Ridge	1
E. D. Mo.	Hulen	1
W. D. Ark.		1
E. D. Ark.		1
Ninth Circuit		
S. D. Cal.	Weinberger	1
	Hall	1
		1
Tenth Circuit		
D. Utah		13
D. Kans.	Mellott	6
Total Districts	**Total Judges**	**Total Cases**
21	21	120

APPENDIX C-2

LIST OF UNREPORTED DISMISSALS BY DISTRICT COURTS OF "PORTAL-TO-PORTAL" ACTIONS UNDER SECTION 2 OF THE PORTAL ACT*

Second Circuit

CONNECTICUT

Walsh v. United States Aluminum Company, C. A. No. 1980, Smith, July 14, 1947.

NEW YORK—SOUTHERN DISTRICT

McKenna, et al. v. General Motors Corporation (Fisher Body Division), C. A. No. 39-554, Conger, March 22, 1948.

McKenna, et al. v. General Motors Corporation (Chevrolet Motor Division), C. A. No. 39-555, Conger, March 22, 1948.

McKenna, et al. v. General Motors Corporation (Eastern Aircraft Division), C. A. No. 39-556, Conger, March 22, 1948.

Third Circuit

NEW JERSEY

Zuccarello, et al. v. General Motors Corporation, C. A. No. 9481, Forman, April 26, 1948.

Amato, et al. v. General Motors Corporation, C. A. No. 9490, Meaney, April 14, 1948.

Saragino, et al. v. General Motors Corporation, C. A. No. 9437, Meaney, May 14, 1948.

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* This list is not complete. It included only those dismissals that have been brought to the attention of Respondent's counsel by local counsel.

Bruzaitis, et al. v. General Motors Corporation, C. A. No. 9474, Meaney, May 14, 1948.

Ackerson, et al. v. General Motors Corporation, C. A. No. 9509, Meaney, May 14, 1948.

Gawleck, et al. v. General Motors Corporation, C. A. No. 9402, Meaney, May 14, 1948.

Muche, et al. v. Electric Boat Co., C. A. No. 9113, May 14, 1948.

Armstrong, et al. v. Muller Metal Products, Inc., C. A. No. 9456, May 5, 1948.

Elliot, et al. v. Pittsburgh Plate Glass Co., C. A. No. 9467, April 28, 1948.

Elliot, et al. v. E. I. duPont de Nemours & Co., C. A. No. 9467, May 4, 1948.

Moselle, et al. v. Driver-Harris Co., C. A. No. 9480, May 13, 1948.

Eick, et al. v. Hercules Powder Co., C. A. No. 9484, May 13, 1948.

Int. Union, Local 713 v. General Motors Corporation, C. A. No. 9490, May 4, 1948.

Dichter, et al v. Aluminum Co. of America, C. A. No. 9492, April 29, 1948.

Workers v. General Motors Corporation, C. A. No. 9509, May 4, 1948.

Heimann, et al. v. Armour & Co., C. A No. 9529, May 3, 1948.

Armstrong, et al. v. Wright Aeronautical Corp., C. A. No. 9530, May 11, 1948.

Mosele, et al. v. Tube Reducing Corp., C. A. No. 9538, May 11, 1948.

O'Shea, et al. v. National Battery Co., C. A. No. 9554, May 13, 1948.

Barnes, et al. v. E. I. duPont de Nemours & Co., C. A. No. 9652, May 4, 1948.

Froesch, et al. v. Pittsburgh Plate Glass Co., C. A. No. 9682, April 29, 1948.

Barclay, et al. v. Original Trenton Cracker Co., C. A. No. 9780, October 30, 1947.

Froesch, et al. v. Libby-Owens-Ford Glass Co., C. A. No. 9865, May 5, 1948.

McKeown, et al. v. Garden State Hosiery Co., C. A. No. 10030, February 11, 1948.

Fourth Circuit

VIRGINIA—WESTERN DISTRICT

Cornett, et al. v. Hercules Powder Company, C. A. No. 319, November 28, 1947.

John D. Lewhorne, et al. v. Hercules Powder Company, C. A. No. 290, November 28, 1947.

Fifth Circuit

TEXAS—NORTHERN DISTRICT

Ford v. Southern Aircraft Corporation, C. A. No. 2375, Atwell, June 16, 1947.

TEXAS—SOUTHERN DISTRICT

Snyder, et al. v. Todd Galveston Dry Docks, Inc., C. A. No. 487, July 17, 1947.

ALABAMA—SOUTHERN DISTRICT

Farr v. Aluminum Ore Company, C. A. No. 687, McDuffie, June 16, 1947.

Sixth Circuit

OHIO—NORTHERN DISTRICT

Davis, et al. v. Formica Insulation Co., C. A. No. 24490, Jones, July 23, 1947.

Matheson and Saley v. Aluminum Co. of America and American Magnesium Corporation, C. A. No. 24441, Jones, September 1947.

Radden v. Aluminum Company of America, C. A. No. 24437, Jones, September 1947.

Bannister, et al. v. General Motors Corporation, C. A. No. 24557, Jones, September 17, 1947.

Neale, et al. v. General Motors Corporation, C. A. No. 24526, Jones, September 17, 1948.

Moughan v. General Motors Corporation, C. A. No. 24453, Jones, September 17, 1948.

OHIO—SOUTHERN DISTRICT

Heine, et al. v. Allis-Chalmers Mfg. Co., C. A. No. 1646, Druffel, June 13, 1947.

Whitehouse, et al. v. The American Rolling Mill Co., C. A. No. 1648, Druffel, June 2, 1947.

Whitehouse, et al. v. Sawbrook Steel Casting Co., C. A. No. 1654, Druffel, June 2, 1947.

Whitehouse, et al. v. William Powell Co., C. A. No. 1650, Druffel, June 2, 1947.

Whitehouse, et al. v. Hamilton Foundry & Machine Co., C. A. No. 1660, Druffel, June 2, 1947.

Whitehouse, et al. v. American Can Co., C. A. No. 1653, Druffel, June 4, 1947.

Lear, et al. v. Cleveland Automatic Machine Co., C. A. No. 1693, Druffel, June 9, 1947.

Coggshell, et al. v. Ford Motor Co., C. A. No. 1655, Druffel, August 25, 1947.

Whitehouse, et al. v. Aluminum Industries, Inc., C. A. No. 1662, Druffel, June 23, 1947.

Combs, et al. v. Standard Silicate Div., C. A. No. 1664, Druffel, June 2, 1947.

Notz, et al. v. General Motors Corporation, C. A. No. 766, Nevin, September 19, 1947.

Baker, et al. v. General Motors Corporation, C. A. No. 1656, Druffel, June 24, 1947.

Patton, et al. v. General Motors Corporation, C. A. No. 1657, Druffel, August 25, 1947.

Kenney, et al. v. General Motors Corporation, C. A. No. 767, Nevin, September 19, 1947.

TENNESSEE—WESTERN DISTRICT

Kirby, et al. v. General Motors Corporation, C. A. No. 1213, Boyd, February 28, 1948.

Gossett, et al. v. Proctor & Gamble Defense Corporation (22 cases), C. A. No. 399, Boyd, January 10, 1948.

KENTUCKY—EASTERN DISTRICT

Tisa v. American Suppliers, Inc., C. A. No. 533, June 27, 1947.

Seventh Circuit

ILLINOIS—NORTHERN DISTRICT

Workman v. E. I. duPont de Nemours & Co., C. A. No. 47-C-426, Campbell, October 3, 1947.

Thomas, et al. v. Chicago Plating Company, C. A. No. 47-C-46, Sullivan, November 24, 1947.

Malzone, et al. v. General Motors Corporation, C. A. No. 46-C-2103, Campbell, June 4, 1948.

Skup, 1352 Independence, Chicago—Individually and in behalf of Other Employees Similarly Situated v. General Motors Corporation, C. A. No. 47-C-520, Igoe, June 15, 1948.

Mattson, et al. v. General Motors Corporation, C. A. No. 47-C-21, Igoe, June 15, 1948.

INDIANA—SOUTHERN DISTRICT

Price, et al. v. General Motors Corporation, C. A. No. 1281, Baltzell, September 26, 1947.

Ashcraft, et al. v. General Motors Corporation, C. A. No. 223, Baltzell, September 26, 1947.

Stevens, et al. v. General Motors Corporation, C. A. No. 1286, Baltzell, September 26, 1947.

Lilly, et al. v. General Motors Corporation, C. A. No. 1285, Baltzell, September 26, 1947.

Stokes, et al. v. General Motors Corporation, C. A. No. 1305, Baltzell, September 26, 1947.

Brown, et al. v. General Motors Corporation, C. A. No. 1283, Baltzell, September 26, 1947.

Mueller, et al. v. General Motors Corporation, C. A. No. 1286, Baltzell, September 26, 1947.

Leonard, et al. v. General Motors Corporation, C. A. No. 1284, Baltzell, September 26, 1947.

WISCONSIN—WESTERN DISTRICT

Edwards, et al. v. General Motors Corporation, C. A. No. 1832, Stone, April 14, 1948.

Sands, et al. v. General Motors Corporation, C. A. No. 1830, Stone, April 14, 1948.

Adkins v. General Motors Corporation, C. A. No. 1331, Stone, April 14, 1948.

Eighth Circuit

MISSOURI—WESTERN DISTRICT

Breusing, et al. v. General Motors Corporation (Oldsmobile Division-Kansas City Plant), C. A. No. 4506, Duncan, December 9, 1947.

Breusing, et al. v. General Motors Corporation (Chevrolet-Kansas City Plant), C. A. No. 4498, Ridge, December 11, 1947.

MISSOURI—EASTERN DISTRICT

Schilling, et al. and Local No. 25, UAW-CIO v. General Motors Corporation, C. A. No. 5123, Hulen, April 30, 1948.

ARKANSAS—WESTERN DISTRICT

Hardesty v. Aluminum Company of America and Aluminum Ore Co., C. A. No. 315, September, 1947.

ARKANSAS—EASTERN DISTRICT

Hardesty v. Aluminum Company of America and Aluminum Ore Co., C. A. No. 1598, September, 1947.

Ninth Circuit

CALIFORNIA—SOUTHERN DISTRICT

Anger, et al. v. General Motors Corporation, Los Angeles Division, C. A. No. 6168W, Weinberger, November 17, 1947.

Armin, et al. v. Standard Oil Co. of Cal., C. A. No. 6190-PH, Hall, October 16, 1947.

Gibson, et al. v. Consolidated Vultee Aircraft Corp., C. A. No. 6277-BH, June 26, 1947.

Tenth Circuit

UTAH

Smith v. Geneva Steel Co., C. A. No. 1255, August 1, 1947.

Dispenza, et al. v. Utah Copper Company, C. A. No. 976.

Dispenza, et al. v. Utah Copper Company, C. A. No. 1253.

McKissick, et al. v. Park Utah Consolidated Mines Co., C. A. No. 1253.

Draper, et al. v. Silver King Coalition Mines Company, C. A. No. 1290.

Smyth, et al. v. New Park Mining Company, C. A. No. 1291.

Lester, et al. v. American Smelting & Refining Company, C. A. No. 1295.

Pratt, et al. v. American Smelting & Refining Company, C. A. No. 1296.

McCandless, et al. v. United States Smelting, Refining and Mining Company, C. A. No. 1297.

Michaelson, et al. v. United States Smelting, Refining & Mining Company, C. A. No. 1298.

Morton, et al. v. United States Smelting, Refining & Mining Company, C. A. No. 1299.

Cases, et al v. Utah Copper Company, C. A. No. 1310.

Gibbons, et al. v. Utah Ore Sampling Company, C. A. No. 1311.

KANSAS

Place, et al. v. Hercules Powder Co., C. A. No. 6076, Mellott, November 3, 1947.

Bennett, et al. v. Hercules Powder Co., C. A. No. 6093, Mellott, November 3, 1947.

Quincy, et al. v. Hercules Powder Co., C. A. No. 6124, Mellott, November 3, 1947.

McNealey, et al. v. Hercules Powder Co., C. A. No. 5993, Mellott, November 3, 1947.

Walker, et al. v. Hercules Powder Co., C. A. No. 6135, Mellott, November 3, 1947.

Allen, et al. v. General Motors Corporation, C. A. No. 6107, Mellott, February 24, 1948.

APPENDIX D

SUMMARY OF REPORTED AND UNREPORTED DISMISSALS BY DISTRICT COURTS OF "PORTAL-TO-PORTAL" ACTIONS UNDER SECTION 2 OF THE PORTAL-TO-PORTAL ACT

District Court	No. of Judges	Total Cases Dismissed
First Circuit		
D. Mass	1	17
Second Circuit		
W. D. N. Y.	1	6
S. D. N. Y.	6	25
N. D. N. Y.	1	1
D. Conn.	2	3
Third Circuit		
E. D. Pa.	2	2
W. D. Pa.	1	43
D. N. J.	3	29
Fourth Circuit		
D. Md.	2	2
W. D. Va.		2
Fifth Circuit		
N. D. Ga.	1	5
N. D. Tex	1	2
S. D. Tex	1	3
S. D. Ala.	1	1

District Court	No. of Judges	Total Cases Dismissed
Sixth Circuit		
E. D. Mich.	5	2
S. D. Ohio	2	14
N. D. Ohio	1	9
E. D. Tenn.	2	4
W. D. Tenn.	1	23
E. D. Ky.		1
Seventh Circuit		
N. D. Ill.	4	7
E. D. Ill.	1	2
S. D. Ind.	1	8
E. D. Wis	1	1
W. D. Wis	1	5
Eighth Circuit		
D. Minn.	2	5
S. D. Iowa	1	6
W. D. Mo.	3	8
E. D. Mo.	1	3
W. D. Ark.		1
E. D. Ark		1
Ninth Circuit		
D. Mont.	1	1
D. Idaho	1	28
D. Ore.	1	1
W. D. Wash.	1	4
E. D. Wash.	1	1
N. D. Cal.	3	6
S. D. Cal.	4	8

District Court	No. of Judges	Total Cases Dismissed
Tenth Circuit		
N. D. Okla.	1	1
E. D. Okla	1	1
D. Kans.	1	9
D. Utah		13
Total Districts	**Total Judges**	**Total Cases**
42	64	314